

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>IN THE MATTER OF:</b>	:	
	:	<b>DECISION OF THE</b>
<b>FRATERNAL ORDER OF POLICE LODGE 9,</b>	:	<b>BINDING INTEREST</b>
	:	<b>ARBITRATOR</b>
<b>AND</b>	:	<b>ON REMAND</b>
	:	
<b>CITY OF SEAFORD, DELAWARE.</b>	:	

*Appearances*

*Ronald Stoner, Esq., for Fraternal Order of Police Lodge 9*  
*David H. Williams, Esq., Morris, James, Hitchens & Williams, for the City of Seaford*

**BACKGROUND**

After unsuccessful attempts to mediate the outstanding issues, the impasse involving the City of Seaford, Delaware (“City”), and the Fraternal Order of Police Lodge 9 (“FOP”), was referred to binding interest arbitration pursuant to 19 Del.C. §1615.

A public hearing was conducted on October 11, 2001, before the Executive Director of the Public Employment Relations Board (“PERB”), acting on behalf of the full Board as the Interest Arbitrator, pursuant to 19 Del.C. §1615(b). The Decision of the Interest Arbitrator was issued December 18, 2001, holding:

Based on the record created by the parties, the last, best and final offer of the City of Seaford is determined to be the more reasonable based on the statutory criteria set forth in 19 Del.C. §1615, each of which was considered in rendering this decision. FOP Lodge 9 v. City of Seaford, Del.PERB, IV PERB 2421 (2001).

FOP Lodge 9 filed a Request for Review of the Decision of the Binding Interest Arbitrator by the full Board on December 21, 2001, and the City of Seaford filed its Response to the Request on January 4, 2002. At the request of the Board, the parties provided written memoranda setting forth their respective arguments on appeal.

The Board convened a public hearing on Wednesday, February 27, 2002, to consider the Request for Review. By decision dated March 8, 2002, the Board remanded the matter to the Executive Director (the designated Interest Arbitrator in this case) to accept additional testimony and argument. FOP Lodge 9 v. City of Seaford, Del.PERB, IV PERB 2521 (2002).

The Interest Arbitrator convened a hearing on May 23, 2002, at which time the parties were afforded the opportunity to present testimony and documentary evidence. The record closed on June 10, 2002, upon receipt of written argument. This decision results from the record created by the parties.

### **SCOPE OF REMAND**

The Public Employment Relations Board remanded this matter to the Interest Arbitrator with direction to:

. . . accept additional evidence and/or argument specifically as to:

1. The costs and history of the salary proposals of the parties;
2. The costs of the parties' respective proposals on contract length; and
3. The financial ability of the City, based on existing revenues, to meet the costs of the parties' last, best and final offers.

The Arbitrator is also directed to state written findings of fact for each issue stated in (1) through (3) above. Further, upon receipt and consideration of argument from the parties, the Arbitrator is directed to specifically address what constitutes "existing revenues" within the meaning of 19 Del.C. §1615(d)(6).

## **POSITIONS OF THE PARTIES**

**FOP Lodge 9:** The last, best, final offer of the FOP, as modified on October 4, 2001, includes:

### **SALARY:**

Year 1 (7/1/00 – 6/30/01) 7 1/8% general increase

Year 2 (7/1/01 – 6/30/02) 3% general increase

Year 3 (7/1/02 – 6/30/03) 3% general increase

The existing Collective Bargaining Agreement paragraph 17.2 provides that the police salary schedule includes salary step increases of 1.5% for steps 1 through step 20 and 1% increases for each year of service after 20 years. Effective July 1, 2000, each officer will receive an annual 2% salary step on his or her anniversary date, in accordance with the matrix attached to the FOP's October 4, 2001, modified last, best, and final offer. That schedule increased the step increment between Steps 1 and 2 from 1.5% to 2.0% in Year 1; increased the step increment between steps 1 through 3 from 1.5% to 2.0% in Year 2; and increased the step increment between steps 1 through 4 from 1.5% to 2.0% in Year 3.

### **Disability Retirement:**

The FOP proposed the existing Seaford Police Pension Plan be modified as follows:

Whenever a member of the police department of the City shall have become disabled or incapacitated from injuries received while in the active performance of official duty and whenever any member of the police department who has been credited with at least nine years of service shall have become permanently incapacitated from performing such regular active duty, he/she may be retired by the police chief from the regular active service and placed upon the retired list and shall receive a pension in the amount of one half his/her salary at the time of his/her disability retirement.

Whenever a member of the police department shall become permanently disabled or incapacitated so as not to be able to be employed in any capacity, from a job-connected injury, he/she shall be entitled to receive a pension herein established in an amount equal to 75% of the amount of his/her salary at the time of his/her disability retirement.

### **Health Insurance for Retirees:**

The City shall pay the entire cost of the retiree's individual health insurance under the City's group plan. In addition to the City's payment, if the retiree elects to purchase family coverage for his/her family, the City shall disperse the amount of \$250.00 monthly from the Seaford Police Pension Plan to offset the additional cost of coverage. The retiree may elect to have the City pay the \$250.00 payment directly to the health insurance carrier.

#### Grievance Procedure:

The FOP proposes that a new Hearing (Step 4) be added to the current Collective Bargaining Agreement, Article 5, Grievance Procedures. The Step 4 Hearing would be conducted by an impartial hearing officer selected by agreement of the parties and the decision of the hearing officer would be binding upon the parties. In the event the parties cannot agree to an impartial hearing officer within 15 days of a request for a Step 4 hearing, an impartial arbitrator shall be selected from the membership of the American Arbitration Association. Costs of the Step 4 Hearing would be borne equally by the parties.

#### Police Fitness Program:

The FOP and the City shall agree to establish a police fitness program as follows:

1. All police officers will receive an annual physical fitness examination by a qualified physician at City expense.
2. The City and the FOP will establish fitness goals and objective for the police officers, to include cardiovascular fitness, flexibility and adoption of life-long good health habits. An annual fitness evaluation will be conducted thereafter.
3. The City will provide adequate space at the Police Department Building for use by the FOP members as a fitness room.
4. The City will pay the FOP the sum of \$3,000 on July 1, 2000, \$3,500 on July 1, 2001, and \$3,500 on July 1, 2002 toward the purchase by the FOP of fitness equipment to be placed in the Police Fitness Room.
5. Following the completion of 2 annual fitness evaluations, the City and the FOP will meet to discuss the establishment of a fitness incentive program for police officers.

#### Special Duty Assignments:

The FOP and the City shall agree to establish a Special Duty Assignment Policy as follows:

1. The FOP will establish a fixed hourly rate of \$35 per hour for all special duty assignments. The hourly rate may be changed by the FOP upon 30 days written notice to the City.
2. The City will receive 10% of the hourly pay rate, as compensation for use of the City vehicles, equipment and the cost of insurance.
3. The City shall utilize off-duty police officers in lieu of on-duty or overtime police officers for special duty assignments whenever possible.

Retroactivity:

All salary increases, including Step increases where applicable, will be retroactive to July 1, 2000.

Incorporation:

All provisions of the July 1, 1997 – June 30, 2000 Collective Bargaining Agreement between the parties remain in effect and are incorporated into the successor agreement unless modified as stated herein.

**City of Seaford**

The last, best, final offer of the City of Seaford, as set forth on June 15,

2001, includes:

Salary:

Year 1 (7/1/00 – 6/30/01)	\$1,500 general increase
Year 2 (7/1/01 – 6/30/02)	3% general increase
Year 3 (7/1/02 – 6/30/03)	3% general increase
Year 4 (7/1/03 – 6/30/04)	3% general increase

Long-Term Disability:

The City will provide a long-term disability group policy. The policy the City proposes to provide is summarized as follows:

Industry:	Police Protection
SIC Code:	9221
Waiting Period:	90 days
Benefit Amount:	60% of Basic Monthly Pay not to exceed \$6,000
Benefit Duration:	To Age 65
Definition of Disability:	Progressive Partial
Pre-existing Condition:	12/6/24
Contributory:	No
Integration:	Primary & Family
Minimum Benefit:	\$50
Federal Maternity:	Same as any other Illness
Own Occupation:	Covered 2 years
Mental, Nervous, Drug and	
	Alcohol Limitations: Covered 2 years
Survivor Benefit:	3 months
Initial Rate Guarantee:	2 years
Cost-of-Living Adjustments:	Non
Takeover Applies:	No
Conversion Privilege:	No

Includes these standard benefits:

- Full Maternity Coverage
- Cost Of Living Freeze
- Waiver of Premiums
- Continuity of Coverage
- 6 Month Recurrent Disability
- Claims Management and Rehabilitation Services

Rates assume participation in Workers Compensation and Social Security.  
Evidence of Insurability is required for all monthly benefit premiums over \$10,000.

Health Insurance for Retiree:

Retirees who elect to purchase health insurance under the City's group plan, presently receive a monthly check in the amount of \$250 to be applied toward the cost of health insurance. The source of the funds is the Police Pension Plan. The City, without offering any opinion or assurances as to the tax impact of doing so, agrees to make this \$250 payment directly to the insurance carrier, as opposed to sending the employee a check for \$250. The source of the fund will continue to be the Police Pension Fund.

Physical Fitness:

1. The parties recognize the necessity for all employees to be physically fit. In an effort to insure such fitness is achieved, the City and the Union agree on a comprehensive medical and fitness program. As part of the annual physical, an employee shall take the following physical fitness test ("Physical Fitness Test"):
  - Exercise electrocardiogram evaluation
  - Percent body fat calibration
  - Grip strength
  - Upper body endurance
  - Abdominal endurance
2. New hires shall take the Physical Fitness Test prior to graduation from the police academy, and thereafter on an annual basis.
3. Employees shall take the Physical Fitness Test on an annual basis.
4. After each employee who was in the bargaining unit on June 30, 2000 has taken the fitness test twice, the City and the Union will confer and agree upon minimum standards and whether to impose progressive discipline in order to secure compliance with minimum standards.

Special Duty Assignments:

The City currently receives 17% of the amount officers are paid for special duty assignments. The City proposes increasing this percentage to 25% in order to more fairly compensate the City for use of cars, equipment and the cost of insurance.

## **FINDINGS**

On review, the Public Employment Relations Board did not make a decision as to whether to affirm, modify, or overturn the decision of the Interest Arbitrator. Therefore, this decision incorporates by reference the Decision of the Binding Interest Arbitrator issued December 18, 2001.

The PERB remanded this matter to the Arbitrator on March 8, 2002, and directed that more information be gathered concerning specific questions. Based on that information, the following responses are provided to the Board's questions:

### **▪ History of the parties' salary proposals**

The history of the parties' salary proposals is documented in City Exhibits 19 and 20. The FOP's initial 3-year proposal (made May 16, 2000), included 15%, 10% and 10% general increases and also included increasing all step increments by 1%. The existing salary matrix provides step increases of 1.5% for Steps 1 through 20, and 1% increases for Steps 21 through 41. The FOP also proposed modifying the matrix rank increases to a standard 8% for all promotions.<sup>1</sup>

The City countered on June 15, 2000, with a 3-year proposal for a general 2% increase in each year, with the first year's increase effective upon the date of ratification. The City modified its offer on December 5, 2002, proposing a \$1,500 increase to all officers in the first year (effective upon ratification), 3% in the second year, and 2% in the third year. City Negotiator Ron Breeding testified the across-the-board increase in year 1 was designed to

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<sup>1</sup> During the remand hearing, the Arbitrator excluded FOP evidence comparing the Seaford police salaries under Schedule C to the prior collective bargaining agreement (effective 7/1/99 through 6/30/00) to salary levels for Town of Smyrna police officers which were agreed upon after the October, 2001 hearing in this case, and the current last, best, final offer of the City of Milford, which was also submitted well after the initial binding interest arbitration hearing in this matter.

address the FOP's stated concern that starting salaries be increased in order to "attract and retain" younger officers.

The FOP modified its offer on January 10, 2001, proposing an 11% general increase in the first year, and 7% in each of the second and third years. The FOP also modified its step increase proposal to move all increments to a flat 2%. This proposal was submitted by the FOP as its last, best and final offer at the initiation of the binding interest arbitration process.

At the final mediation session on May 24, 2001, the City modified its proposal to increase the general increase in the third year to 3% and to add a fourth year to its proposal, also with a 3% general increase. Mr. Breeding testified the fourth year was added to the City's proposal because the first year of the contract would expire on June 30, 2001, and the City was seeking a period of labor peace between negotiations. This proposal constitutes the last, best and final offer of the City.

The FOP modified its last, best and final offer on October 4, 2001, to decrease its general increase proposal for the first year to 7 1/8%, and to 3% in each of the second and third years. The FOP modified its step increase proposal to increase the step increments to 2% one step incrementally in each of the three years of the contract, and to grant step increases on the anniversary date of each employee's hire, rather than on the first day of the fiscal year.

▪ **Cost of the parties' salary proposals**

There are a number of methods by which the cost of and differences between salary proposals can be estimated, but the accuracy of the estimates depends on both the validity of the underlying assumptions and the accuracy of the calculations. In this case, both the City and the FOP projections submitted on remand contain assumptions which bias their calculations.



The City errs in basing its costing of the FOP proposal on matrices which include a 2% increase between each step of every rank. The FOP's last, best, final offer initiated a process to ultimately move all the step increases to 2%, but which only changed the increases to 2% by adding one step each year. Specifically, the FOP proposed to restructure the salary matrix as follows:

Year 1: Step 2 = 2%; Steps 3 – 20 = 1.5%; Steps 21-41 = 1%

Year 2: Steps 2 and 3 = 2%; Steps 4 – 20 = 1.5%; Steps 21-41 = 1%

Year 3: Steps 2 – 4 = 2%; Steps 5 – 20 = 1.5%; Steps 21-41 = 1%

This error compounds across the matrix and over the City's calculation of the cost of the three years of the FOP's proposal. As an example, in Year 3, a Lieutenant at Step 24 earns \$54,294 under the FOP's generation of its matrix, and \$61,069 under the City's flawed generation of the FOP matrix, a difference of \$6,775.

This mistake is further compounded by estimating premium wages based on historical hours worked by individual officers, many of whom are in higher ranks with greater seniority. The cumulative result of this miscalculation is that the City's estimate of both total salary costs under the FOP proposal and the differences between the costs of the FOP and City proposals over the life of the proposals are significantly overstated.

The FOP recalculated its salary cost proposals to include "roll-ups" or other employment costs, consistent with the City's initial estimates of 19.16% in FY 2001, and 20.16% (to include a 1% increase in the City's pension contribution rate) in the remaining years of the proposals.

The FOP does not include in its calculations, however, the costs of premium wages, which include (under the City's explanation) Christmas bonuses, standby, holiday, and overtime wages. The City projected an exact figure for these costs (which are directly related to the salary matrix and therefore directly impact wage costs), based on the assumption that individual

officers who have historically worked standby, holiday and overtime hours will continue to work exactly the same number of hours in each year of the contract.

The FOP took exception to this method through its rebuttal witness who noted that although he had worked approximately 132 holiday and overtime hours in the past, since he was promoted in October 2001, he had worked no standby, holiday, or overtime hours, raising a question as to the accuracy of the City's projections. The FOP called into question whether the individual officers identified did or will receive the number of premium hours projected by the City's estimate, but did not call into question whether the overall amount of premium hours would be served in the Department overall. The specificity of the City's data does provide a useful basis for projecting an anticipated "amount of premium pay", by dividing the total wage calculation by the base wage calculation based on the City's calculation of its proposal in each year. This calculation results in an average additional cost of 13% of base wages projected for "premium wage" costs annually.

In order to provide the Board with the requested cost of the wage proposals, attached to this decision is a copy of the corrected proposed matrices of the parties, based upon their last, best and final offers. Although the City generates all of its matrices based on hourly rates, I have used annual salary figures. This results in some cases in a difference of a few dollars, but does not significantly impact the costing of the proposals.

Using the attached salary matrices and the list and distribution of officers provided by the parties<sup>2</sup>, this decision includes an estimate of base wage costs under each party's proposal for each year of the contract. Discrepancies between step levels and/or ranks for individual officers, were resolved by comparing the data provided. In one case, the FOP credited an

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<sup>2</sup> FOP Supplemental Exhibit 8 and City Exhibit 21.

officer with a rank in the first year of the proposals which according to City data he did not attain until FY 2002. Where there were discrepancies between the step level of an individual officer, I adopted the City's step assignment on the assumption that it had direct access to the underlying data in its personnel records.

Finally, the calculations were simplified to include step and promotional increases at the beginning of each fiscal year. This assumption will overstate costs under the FOP's proposal which does not grant these increases until an officer's anniversary of hire/promotion date. This difference, however, is under 2%, with the result that the estimated difference in costs between the FOP and City proposal is slightly overstated.

Based on these assumptions, the differences in costs of the FOP and City salary proposals by year are:

	<b>Year 1 FY 01</b>	<b>Year 2 FY 02</b>	<b>Year 3 FY 03</b>	<b>Year 4 FY 04</b>
<b>FOP Base Wages</b>	672155	770444	811314	826468
Premium Pay (base * 13%)	87380	100158	105471	107441
Total Wages	759535	870602	916785	933909
Roll-up :				
Year 1 = total wages * 19.16%				
Year 2= total wages * 20.16%	145527	175513	184824	188276
<b>Total FOP Cost</b>	<b>905,062</b>	<b>1,046,115</b>	<b>1,101,609</b>	<b>1,122,185</b>
 <b>City Base Wages</b>	 651149	 744759	 780402	 817712
Premium Pay (base * 13%)	84649	96819	101452	106303
Total Wages	735798	841578	881854	924015
Roll-up :				
Year 1 = total wages * 19.16%				
Year 2= total wages * 20.16%	140979	169662	177782	186281
<b>Total City Cost</b>	<b>876,777</b>	<b>1,011,240</b>	<b>1,059,636</b>	<b>1,110,296</b>
 <b>DIFFERENCE</b>	 <b><u>\$28,285</u></b>	 <b><u>\$34,875</u></b>	 <b><u>\$41,973</u></b>	 <b><u>\$11,889</u></b>
(FOP Cost – City Cost)				
<b>Total Wage Cost Difference over 3 years</b>		<b><u>\$105,133</u></b>		

The difference in cost is one measure of the scope of the proposals. The cost of retroactivity in the first two years of this agreement (both of which have expired) is another. Testimony established that bargaining unit officers are currently being paid according to Salary Schedule C of the collective bargaining agreement which expired on June 30, 2000, and that while officers have advanced in steps and rank in the customary fashion, no general increases have been implemented. Basing this calculation only on officers who were on the payroll as of the May 23 hearing date, and the assumptions detailed above for calculating total wage costs, the costs of retroactivity for FY 2001 and FY 2002 are:

	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>
Base Wages	625024	691516
Premium Pay (base * 13%)	81253	89897
Total Wages	706277	781413
Roll-up :	135323	157533
Year 1 = total wages * 19.16%		
Year 2= total wages * 20.16%		
<b>Total Wage Cost</b>	<b>\$841,600</b>	<b>\$938,946</b>

<b><u>Cost of Retroactivity</u></b>	<b><u>City</u></b>	<b><u>FOP</u></b>
<b>YEAR 1 (FY 2001)</b>		
Cost of Proposal	876777	905062
Salaries Paid	841600	841600
Difference	<b>\$35,177</b>	<b>\$63,462</b>

<b>YEAR 2 (FY 2002)</b>		
Cost of Proposal	1011240	1046115
Salaries Paid	938946	938946
Difference	<b>\$72,294</b>	<b>\$107,169</b>

▪ **Cost of the parties' proposals on contract length**

The cumulative costs of the parties' last, best and final offers over the three and four year proposed lengths of the contract are set forth below:

	<b><u>FOP Proposal</u></b>	<b><u>City Proposal</u></b>
<b><u>Salary Proposal:</u></b> (total cost)		
Year 1 (FY 2001)	\$ 905,062	\$ 876,777
Year 2 (FY 2002)	1,046,115	1,011,240
Year 3 (FY 2003)	1,101,609	1,059,636
Year 4 (FY 2004)		1,110,296
<b><u>Long-Term Disability Benefit</u></b> <sup>3</sup>		
Year 1 (FY 2001)	\$ 4,600 <sup>4</sup>	\$ 6,000
Year 2 (FY 2002)	4,600	6,000
Year 3 (FY 2003)	4,600	6,000
Year 4 (FY 2004)		6,000
<b><u>Retiree Health Insurance</u></b> <sup>5</sup>		
Year 1 (FY 2001)	\$ 21,600	
Year 2 (FY 2002)	21,600	
Year 3 (FY 2003)	21,600	
<b><u>Grievance Procedure</u></b>	Adds a Binding Grievance Arbitration Step. Parties jointly bear arbitration costs	
<b><u>Police Fitness Program:</u></b>		
Year 1 (FY 2001)	\$ 3,000	
Year 2 (FY 2002)	3,500	
Year 3 (FY 2003)	3,500	
<b><u>Special Duty Assignments:</u></b>	All costs are paid by parties requesting Special Duty assignment of officer.	Issue concerns appropriate distribution of the earnings.

The FOP's last, best, final offer specifically states that salary increases will be retroactive to July 1, 2001, whereas the City's offer is retroactive to July 1, 2001, only for

<sup>3</sup> Estimates based on FOP Exhibit 5 from the 10/11/01 hearing. Also see the City's alternative calculation of the impact of adding this benefit to the Police Pension Plan.

<sup>4</sup> The City disputes the accuracy of these numbers, asserting the impact of creating a "disability pension", with no limitations or set-asides, funded from by the Police Pension Fund (rather than purchasing Long Term Disability Insurance) as proposed by the FOP creates a potentially unmanageable and unpredictable expense to the City because the City's contribution to the Police Pension Fund is based on actuarial projections.

<sup>5</sup> Estimate based on the City's costing of this benefit. City Exhibit 9

employees on the payroll at the time of ratification or Interest Arbitrator's award.<sup>6</sup>

Consequently, one must assume that the other offers will not be retroactively applied.

The FOP argues that adopting the City's offer for a four-year agreement rewards the City . . .

. . .for failing to reach an agreement and does not promote better labor relations in the future between the parties, in that the employer who does not settle promptly earns something they did not bargain for (4<sup>th</sup> year), delays the payment of the salary increases, can earn interest on the unused funds or can divert the budgeted funds to other expenditures, projects, reserves or surpluses. The employee bargaining unit that does not settle promptly does not get a salary increase, does not automatically get retroactive payments for all of its members in this case (based on the City's proposal that only employees at the time of ratification or award receive the retroactive pay), and does not get interest on the retroactive increases. Memorandum of FOP Lodge 9, page 7 (6/10/02).

The FOP's argument, while it may be relevant to an unfair labor practice charge alleging a failure to bargain in good faith, does not have relevancy in a binding interest arbitration proceeding. The Arbitrator is limited to review and analysis of the parties' last, best and final offers in their totality, based upon the criteria set forth in section 1615(d) of the POFERA.

The issue of contract duration is normally tied to salary issues and stability in the bargaining relationship. The statute requires that collective bargaining agreements have a duration of at least two years and also envisions that agreements will be reached prior to expiration of a prior agreement. The stated purpose of the Police and Firefighters Employment Relations Act is to "promote harmonious and cooperative relationships between public employers and their employees" and to protect the public through collective bargaining. There is no question but that binding interest arbitration is not collective bargaining, but rather a procedure which is employed when collective bargaining has failed. By definition, a binding

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<sup>6</sup> City Exhibit 19.

interest award results in one side prevailing on all the issues in dispute and the other side is bound to accept that outcome. Under this scenario, it is not difficult to see where a period of labor relations stability would be to the mutual benefit of the parties.

In this case two years of the term of this disputed agreement have already expired. If this award for a four year agreement were accepted today, it would expire June 30, 2004, and the parties would be obligated to begin successor negotiations on or before March 30, 2004.

▪ **What constitutes “existing revenues” within the meaning of 19 Del.C. §1615(d)(6)?**

It is a fundamental principle of statutory construction that “. . . words of common usage should be given their usual, ordinary and natural meaning.” Haddock v. Board of Public Education in Wilmington, Del.Ch., 84 A.2d 157, 161 (1951). Vice Chancellor Allen described this process of discerning legislative intent in Seaford Board of Education v. Seaford School District, Del. Ch., C.A. 9491, Allen, C. (1988), I PERB Binder 243, 251:

It is of course a court’s ultimate aim in construing or interpreting a statute to attempt, in the specific setting of a concrete problem, to satisfy the legislative will or purpose has been expressed generally in the statutory language. When that will or purpose has been expressed in clear language that clearly applies, there is no occasion for a court to do more than apply the language. If, however, that will or purpose has not been clearly expressed, interpretation in order to deduce it is required. On other occasions it is reasonably plain that the legislature had no specific intention with respect to the specific problem that later arises. In that circumstance, the best technique to employ – the one most consistent with the special, limited judicial role in our democracy – is for the court to interpret the words used, in a manner consistent both with their ordinary usage and with the discernible overall intent of the statute.

An exception to this principle can occur when a word or phrase is a “term of art.” Both the FOP’s economist and the City’s Finance Director testified “existing revenues” is not a term of art with a commonly understood meaning within the public finance or accounting professions.

“Revenues” means “the yield of sources of income that a political unit collects and receives into the treasury for public use.”<sup>7</sup> “Income” is defined as “a gain or recurrent benefit, usually measured in money, that derives from capital or labor; *also*, the amount of such gain received in a period of time.”<sup>8</sup> Based on the evidence and testimony presented, I find the City of Seaford relies upon a number of revenue or income sources to fund its operations. It receives revenue through both the General Fund and the Enterprise Fund.

The City’s Financial Statement for Fiscal Year 2001 (FOP Exhibit 2), which covers the first year of the agreement in dispute and the period of July 1, 2000, through June 30, 2001, lists the following General Fund Revenues (at page 4):

- Taxes
- Intergovernmental
- Fines and forfeitures
- Licenses, permits and fees
- Interest and late charges
- Sale of fixed assets
- Community pool and recreation
- Charges for services
- Miscellaneous

Additionally, the Financial Statement also includes under the heading “Other financing sources”, “Operating transfers in”. The “Combined Statement of Revenue, Expenses, and Changes in Fund Equity” for the Enterprise Fund (page 5 of the FY 01 Financial Statement) reveals the “operating transfers in” originated exclusively from transfers out of the Enterprise Funds.

The City’s Finance Director testified Enterprise Fund revenues are generated through the sale of electricity, water and sewer services to persons and businesses residing and operating within the City’s jurisdiction. She also testified the City engages in these enterprises because

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<sup>7</sup> Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition (Merriam-Webster, Inc., 1996), p. 1002.



they generate income which the City budgets for and expends annually to provide other services to its citizenry. The City's Finance Director testified the income from the enterprise services allows the City to keep taxes low and that moneys are routinely transferred from the Enterprise to the General Fund to balance the budget annually.

Revenue is dynamic in character. It constitutes a flow of moneys, in this case, into the City's coffers. Revenues from the electricity, water and sewer enterprise funds consist of net income (operating and non-operating revenues less operating expenses), or "profits" in the vernacular. Included in the non-operating revenues is "interest earned" which may include interest earned on the investment of reserved funds.

Reserves, on the other hand, are moneys which have been set aside, saved, or "reserved". While they may originate from excess revenues and be allocated to reserves in a given year, they do not constitute an active revenue stream. Funds are reserved or allocated to reserves through an affirmative act of the governing body. Likewise, how those reserves are expended, invested, or allocated is also within the exclusive authority of the City's governing body.

The term "existing revenues" limits the Interest Arbitrator to considering revenues, based on existing fee and taxation rates. It is beyond the scope of the Arbitrator's authority to consider whether such rates should or could be increased, whether other expenses should or could be decreased or reallocated, and/or whether existing reserves should or could be allocated to fund the proposals. While it is certainly within the authority of the governing body of a public employer to make any of these choices subject to the political will of its citizenry, it is

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<sup>8</sup> Ibid, p. 588.

not within the province of the Interest Arbitrator under the Police Officers' and Firefighters' Employment Relations Act.

- **Financial ability of the City, based on existing revenues, to meet the cost of the parties' last, best and final offers.**

There is a very clear and logical reason the General Assembly limited the Interest Arbitrator to consider only "existing revenues" in reaching a determination as to whether a public employer can afford a proposed settlement. Many costs, including those for wages and benefits, are recurring and generally tend to automatically increase annually, either as a result of negotiated provisions of a collective bargaining agreement or due to inflationary pressure on the cost of services or goods an employer has agreed to provide. Consequently, they constitute an on-going and frequently increasing financial obligation.

In order to evaluate whether these costs are within an employer's ability to afford, the Interest Arbitrator must assess existing, stable and continuing sources of revenue. He or she must assess, based on what is known at the time of the proceeding, whether these revenue sources have the probability of being sufficient to fund the "built-in" increases in expenses associated with the agreement. As discussed above, the Arbitrator cannot base his decision on whether there is a possibility or probability that the legislative body will create new revenue sources, expand existing revenue sources, or find alternative funding sources.

Turning to the facts of this case, City Exhibit 22, includes the following data:

Year	General Fund Revenue	Enterprise Fund Operating Revenues	Total Revenues
1997	2,121,832	9,622,062	11,743,894
1998	2,248,893	10,099,559	12,348,452
1999	2,665,884	10,217,914	12,883,798
2000	2,739,090	10,123,417	12,862,507
2001	3,886,268	9,807,488	13,693,756

The City also provides specific data for FY 2000 and FY 2001 on the net effect of transfers from the Enterprise Funds to the General Fund to balance the budgets in each of these years:

Transfers from Enterprise Funds:

	<u>FY 00 Actual</u>	<u>FY 01 Actual</u>
Revenues	10,263,762	10,155,395
Expenses	7,924,073	8,089,543
Net Income	2,339,689	2,065,852
Transfers Out	-2,350,000	-2,300,000
NET Transfer	-10,311	-234,148

Source: City Exhibit 12

The data and testimony of the City's Finance Director and Auditor establish that for at least the last two years, the City has used reserved funds from the Enterprise Fund to supplement the City's revenues in order to meet the City's expenses.

The City's Finance Director testified there are reserves in the General and each of the Enterprise funds. Most of the reserves are legally restricted or are designated for specific purposes. City Exhibit 14. The unrestricted reserves were set aside by the City Council either for emergency purposes, to cover potential revenue shortfalls in the future, or to fund a specific future project. The Council set a goal to reserve 5% of "sales" in the Enterprise funds annually but the City has been unable to meet this goal in the last two years because it has not had the cash to do so.

The Finance Director also testified the managers in each of the City's departments were directed to limit spending and to cut their budgets by 5% in the winter of FY2001, and were directed to continue those cuts and cost saving measures in FY 2002.

Based on the cost estimates described above, the City would require an additional \$35,177 under its proposal and \$63,462 under the FOP's proposal to fund retroactive increases for FY 2001. It is apparent from the data in evidence that these increases could be funded through additional transfers from reserved funds. It is, however, beyond the authority of this Arbitrator to mandate such transfers be made. Consequently, the only logical conclusion is that the additional costs of the FOP proposal cannot be funded based on "existing revenues."

### **DECISION**

The Interest Arbitrator's December 18, 2001, decision evaluated the last, best, final offers of the parties, as supported by the evidence and argument placed on the record, against the statutory criteria set forth in 19 Del.C. §1916. This arbitrator found the record supported the conclusion, based on the merits, that the City of Seaford's offer should be accepted in its entirety. The findings of the Interest Arbitrator's December 18, 2001, decision are incorporated by reference into this decision. FOP Lodge 9 v. City of Seaford, Del.PERB, IV PERB 2421 (2001).

Additionally, 19 Del.C. §1615 (d) provides:

The binding interest arbitrator shall make written findings of fact and a decision for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety. In arriving at a determination, the binding interest arbitrator shall specify the basis for the binding interest arbitrator's findings, taking into consideration, in addition to any other relevant factors, the following:

(6) The financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements . . .

In making determinations, the binding interest arbitrator shall give due weight to each relevant factor. . . With the exception of paragraph (6) of this subsection, no single factor in this subsection shall be dispositive. 19 Del.C. §1615 (d).

The record in this case, including the additional evidence and argument presented on remand, supports the conclusion that the City of Seaford cannot afford the additional cost of the FOP's last, best, final offer, based on existing revenues.

WHEREFORE, the City of Seaford's last, best, final offer shall be accepted in its entirety.

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CHARLES D. LONG, JR., ARBITRATOR  
EXECUTIVE DIRECTOR  
DEL. PUBLIC EMPLOYMENT RELATIONS BOARD

DATED: 15 July 2002